

STITES & HARBISON PLLC

ATTORNEYS

June 26, 2008

HAND DELIVERED

Appeal of Enforcement Order, TDEC-OGC
20th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-1548

RE: In the Matter of Horn Springs Development, Inc. and Thorne's Excavating Company, LLC, Before the Water Quality Control Board, Director's Order 08-0050

To whom it may concern:

Enclosed herewith is the answer to director's order and assessment, notice of appeal and petition for hearing on behalf of Horn Springs Development, Inc. and Thorne's Excavating Company, LLC, in the above referenced matter.

Please let me know if you have questions.

Very truly yours,

STITES & HARBISON, PLLC

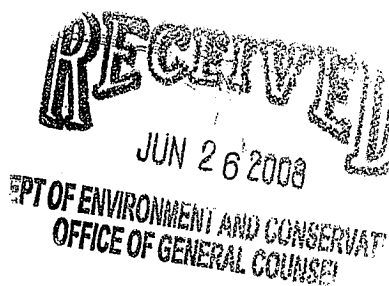
William Penny
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Enclosure

cc: Jack Bell
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IN THE MATTER OF:

**HORN SPRINGS DEVELOPMENT, INC.
and
THORNE'S EXCAVATING COMPANY,
LLC,**

Respondent.

**TENNESSEE DIVISION OF
WATER POLLUTION
CONTROL**

CASE NO.: WPC08-0050

**ANSWER TO DIRECTOR'S ORDER AND ASSESSMENT, NOTICE OF APPEAL AND
PETITION FOR HEARING**

Comes now Horn Springs Development, Inc. and Thorne's Excavating Company, LLC (collectively "Respondents"), by and through counsel, and hereby submits this Answer to Director's Order and Assessment, Notice of Appeal and Petition for Hearing and for good cause would state:

1. The Respondents admit the allegations in Paragraph I.
2. The Respondents admit the allegations in Paragraph II. Service of process for this action only may be made upon the undersigned.
3. The Respondents admit the allegations in Paragraph III. Service of process for this action only may be made upon the undersigned.
4. To the extent a response is required to Paragraph IV, respondents would show that the statutory and regulatory citations are paraphrases or incomplete quotes and would deny any language not expressly contained in such statute or rules.

5. In response to Paragraph V, the Respondents admit that they are persons but would deny they have violated the Act.

6. To the extent a response is required to Paragraph VI, respondents would show that the statutory and regulatory citations are paraphrases or incomplete quotes and deny any language not expressly contained in such statute or rules.

7. To the extent a response is required to Paragraph VII, respondents would show that the statutory and regulatory citations are paraphrases or incomplete quotes and deny any language not expressly contained in such statute or rules.

8. The Respondents admit the first sentence of Paragraph VIII but deny the remainder of the paragraph.

9. The Respondents admit the allegations in Paragraph IX.

10. The Respondents admit the allegations in Paragraph X.

11. In response to the allegation in Paragraph XI, Respondent Thorne admits to speaking with a city official about silt fencing related to the area around a sinkhole, but Respondents lack sufficient information to either admit or deny the remainder of the allegations.

12. The Respondents admit the allegations in Paragraph XII.

13. In response to the allegations in Paragraph XIII, Respondents lack sufficient information to either admit or deny what the Division personnel observed. Further Respondents would show that on November 5, 2007, the Site received a rainfall event exceeding the design storm event measured by intensity, which overwhelmed some EPSC structures. Respondents

timely repaired structures and added additional EPSC measures. In addition, there were other areas in and around this area that were not on Respondents' site that resulted in soil runoff not attributable to the Respondents and would deny the remainder of Paragraph 13.

14. In response to the allegations in Paragraph XIV Respondents admit that a notice of violation was issued on November 8, 2007, but the language of the NOV speaks for itself and would deny any language not expressly contained therein, but would deny that any violations occurred. The remainder of the allegations in Paragraph XIV are denied.

15. In response to the allegations in Paragraph XV, the Respondents admit the first paragraph, but would show that the Division never responded to the sediment removal and stream restoration plan. Respondents admit the allegations in the second paragraph. In the third paragraph Respondents deny the allegations in the first sentence. Respondents admit to discussing the detention basin location in a water course which was not identified as a stream by the Division during the Division's hydrologic determination prior to construction. Respondent denies this water course was or is Stream 3 or any other stream. Respondents deny that EPSC measures cannot be placed in "waters of the state" as that term is defined in the Water Quality Control Act. In addition, Respondents would show that Division personnel conducted a hydrologic determination prior to construction and were advised by letter from Bill Duffel on December 20, 2006, as to the location of any streams on the Site by GPS coordinates. Those coordinates were plotted and strictly adhered to. Respondents deny that they installed any sediment detention basins or check dams in any streams. Respondents admit that the installed EPSC, including the sediment basin and existing check dams reinforced by Respondents were successful in keeping sediment on site as provided in the SWPPP.

16. In response to the allegations in Paragraph XVI, the Respondents lack sufficient information to either admit or deny the allegations of what the Division observed; however, Respondents specifically deny the presence of any in-stream detention in Stream 3. Respondents would show, however, that the Division failed to approve the sediment removal plan timely submitted by the Respondents, and sediment remaining from the prior storm remained there because of the dilatory response by the Division, as Respondents had not been authorized to remove the sediment. Further more than six months later the Division still has not approved the plan. Respondents deny the remainder of the allegations in Paragraph XVI.

17. In response to the allegations in Paragraph XVII, Respondents admit that a NOV was issued, but would deny any violation therefrom. Respondents admit that the Division denied the application for sediment removal, but the Division failed to comply with proper due process in doing so. Respondents would deny any further allegations pertaining to statements in the January 8, 2008, letter to the extent not expressly stated therein.

18. In response to the allegations in Paragraph XVIII, Respondents would show that the January 23, 2008, letter speaks for itself and would deny any language not expressly contained therein.

19. The Respondents admit the allegations in Paragraph XIX, but would further state the Division never responded to the plan submitted February 5, 2008, and that the Division's dilatory and moribund action on the Respondents plans have exacerbated any conditions of concern.

20. In Response to the allegations in Paragraph XX after representatives of Respondents learned the Division was prepared to deny the Aquatic Resource Alteration

Permit, they requested that they hold it in abeyance rather than deny it. Respondents would show that repeated attempts to determine the status of the corrective action plan were met with inattention at best.

21. In Response to the allegations in Paragraph XXI, the Respondents lack sufficient information to either admit or deny the allegations.

22. The Respondents deny the allegations in Paragraph XXII.

23. The Respondents deny the allegations in Paragraph XXIII.

24. All allegations not expressly admitted are hereby denied.

25. As Respondents first affirmative defense, the Respondents would show that the complained of "in-stream detention" was either authorized by the Division or the Division is bound by the doctrine of estoppel from citing any violations related to such structures as its representatives identified streams on the site and Respondents relied upon such action to their detriment.

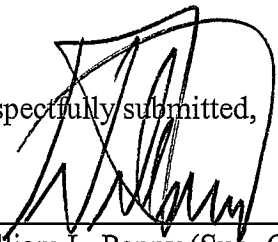
26. As Respondents second affirmative defense, the Respondents would show that any offsite sedimentation was an unavoidable accident and an act of God.

27. As Respondents third affirmative defense, the Respondents would show Respondents would show that the civil penalty assessment was based upon unlawful procedure and is otherwise arbitrary and capricious.

NOW, having fully responded, the Respondents hereby submit this Petition and request hearing before the Water Quality Control Board, and at such hearing the Board dismiss this

matter and provide an award attorneys fees and costs as provided in Tenn. Code Ann. 4-5-325
and/or the Equal Access to Justice Act.

Respectfully submitted,



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